



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------------------|---------------------|------------------|
| 10/810,349 | 03/26/2004 | Pieter Theodorus Johannes Aquarius | VER-179XX | 8227 |

207 7590 05/03/2006

WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

EXAMINER

LOPEZ, MICHELLE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3721

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,349

Applicant(s)

AQUARIUS, PIETER THEODORUS
JOHANNES

Examiner

Michelle Lopez

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 16-18 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/7/05, 7/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3721

DETAILED ACTION

Election/Restrictions

Claims 16-18 and 23 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim.

Applicant's election with traverse of claims 1-15 and 19-22 in the reply filed on February 23, 2006 is acknowledged. The traversal is on the ground(s) that examination of the claims is not seen as imposing an undue burden on the Examiner. This is not found persuasive because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement. Since the Restriction Requirement of 2/8/06 properly set forth the reasons and the distinction of the grouped inventions, and since the examination of distinct inventions imposes undue burden on the Examiner, the restriction is considered to be proper. Therefore, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Art Unit: 3721

The limitations of "each time" in claim 1, lines 6 and 9, and "the bottom dimensions" lack antecedent basis.

The functional recitations in claim 1 of "a control designed for, each time, forming a layer" and "designed such that, each time, the loading unit places a formed layer"; in claim 3, "the control designed to rotate a bag through an angle of 45 degrees", "to rotate it through an additional 45 degrees", and "designed to already provide the first rotating system"; and in claims 5 and 19, "a transfer device has been arranged by means", are indefinite in that the scope of the claimed structure that applicant considers to be the invention is unclear. The claims are written in a narrative format and therefore it is difficult to determine what is the scope of the claimed invention. The claim should be rewritten positively reciting the structure of the invention. Also, in claim 1, it is not clear what does "each time" refers to.

Regarding claim 3, the rotation of the bag is indefinite in such that the initial position of the bag is not tied to any other part of the claim and has no point of reference. Is the rotation related to a horizontal or vertical orientation? Also, "the first rotating system", "the processing of a preceding bag", and "the second system" lack antecedent basis.

Regarding claims 4 and 5, the limitations of "one of the conveyors" and "the first conveying direction" respectively lack antecedent basis.

Regarding claims 7 and 19, the limitation of "both sides of the collecting belt" lack antecedent basis. Also, it is unclear to which structure is being "pivotable from a horizontal position into a vertical position". Also, it is not clear which is the reference point for the horizontal and vertical position.

Art Unit: 3721

The following limitations lack antecedent basis: in claim 8, “bags S”; in claim 10, “the further conveying path” and “the bottom of the holder”; in claims 9, “such outer dimensions”; in claim 11, “the middle of the bottom”, “the bottom”, and “the middle of the holder”; in claim 12, “the bottom of the holder” and “the bottom of the container”; in claim 14, “the vertical position”; in claim 19, “the first conveying direction”; in claim 20, “bags S”; in claims 21 and 22, “such outer dimensions”, “the bottom of the holder”, “the middle of the bottom”, “the middle of the holder”, “the bottom of the container”, and “the vertical position of the holder”. There is insufficient antecedent basis for these limitations in the claims.

Regarding claims 13, 21, and 22 the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 9, 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Fallas (4,864,801).

Fallas discloses the invention substantially as claimed including an apparatus for loading containers with bags comprising a feed conveyor assembly and a loading unit, a control designed for forming layers of bags, and a container to be filled with the formed layer of bags (claim 1); a stop 26, a first conveying direction, a transfer device 40, a further conveying path with a second

Art Unit: 3721

conveying direction perpendicular to the first conveying direction (claim 5); wherein the loading unit is provided with a holder 66 movable up and down as shown in col. 5; 38-43 (claim 9).

With respect to claim 14, Fallas also teaches the concept of pressure-controlled air cylinder and a drive (not shown numerically) to control the vertical position of the holder as shown in Fig. 2J.

With respect to claim 15, Fallas discloses a conveying system for containers as shown in Fig. 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (4,864,801) in view of Focke (5,430,994).

Fallas discloses the invention substantially as claimed including two rotating systems 30,20 arranged one behind the other as shown in Figs. 2A-2E, but does not disclose wherein each rotating system comprises two parallel running conveyor belts which are drivable at different speeds. Focke teaches the concept of a feeding conveyor having two rotating system 17,16 arranged one behind the other, wherein each rotating system comprises two parallel running conveyor belts (18,19) and (35,43) which are drivable at different speeds for the purpose of feeding bags to a packer for the packing of packs into containers in groups or layers. It would

Art Unit: 3721

have been obvious to have provide Fallas' invention as taught by Focke in order to pack packs of bags into containers in groups or layers.

With respect to claims 3 and 4, Focke also teaches the concept of rotating a bag through an angle of 45 degrees via the inclination of the first rotating system 17 and rotating the bag through an additional angle of 45 degrees on the second rotating system as shown in Figs. 3-6, and control signals via 46 (claim 3); and the conveyor 17 is arranged so as to be movable up and down (claim 4).

Claims 6-8, 12-13, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (4,864,801) in view of Fallas (5,123,231).

Fallas'801 discloses the invention substantially as claimed including a collecting belt at conveyor 24 (claim 6) and folding side plate as shown in Figs. 2A-2E (claim 7), but does not specifically disclose a retracting belt movable as a whole in the second direction. Fallas'231 teaches the concept of a collecting belt and a retracting belt 100, i.e. oscillating conveyor, wherein such retracting belt is movable as a whole in a second direction as shown in col. 4; lines 9-53. Therefore, it would have been obvious to one having ordinary skill in the art to provide Fallas'801 feeding conveyor assembly as taught by Fallas'231 to selectively depositing product groups into receptacles.

With respect to claims 8 and 20, Fallas'801 also discloses wherein a discharge end at the vicinity of 26 is arranged to be movable up and down.

With respect to claims 12-13, Fallas'231 also teaches the concept of sensors as proximity switches 222,224.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (4,864,801).

While Fallas'801 discloses a bottom of the holder formed by a curtain, wherein the curtain has two curtain parts which are movable from a closed position away from each other to an open position, but does not specifically disclose a flexible curtain. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provide a flexible material forming the curtain, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (4,864,801) in view of Focke (5,430,994) and in view of Fallas (5,123,231) as discussed above.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (4,864,801) in view of Fallas (5,123,231) and in view of Focke (5,430,994) and as discussed above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ryan, Prakken'011, Prakken'677, Prakken'218, Goodman'099, Mantovani'942, Dyess'932, and Prakken'640 are cited to show related inventions.

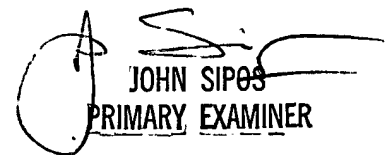
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

Art Unit: 3721

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML


JOHN SIPOS
PRIMARY EXAMINER